
TITLE 326 AIR POLLUTION CONTROL BOARD

CONTINUATION OF FIRST NOTICE OF COMMENT PERIOD

LSA Document #09-362

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING OPEN BURNING**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to [326 IAC 4-1](#) concerning open burning. The First Notice of Comment Period, published on June 3, 2009 (DIN: [20090603-IR-326090362FNA](#)), requested comments on five categories of open burning that may be suitable for exemption from the current IDEM approval process. That comment period has ended; however, IDEM has identified one additional category of open burning that may be suitable for exemption from the current IDEM approval process. This Continuation of First Notice of Comment Period provides information about adding an additional exemption at [326 IAC 4-1-3](#) to allow the ceremonial burning of United States flags that have been determined by Indiana residents to be no longer fit for display and requests comments on this proposed amendment.

HISTORY

First Notice of Comment Period: June 3, 2009, Indiana Register (DIN: [20090603-IR-326090362FNA](#)).

CITATIONS AFFECTED: [326 IAC 4-1](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**Basic Purpose and Background**

Open burning is generally prohibited in Indiana; however, state law exempts certain open burning activities under conditions that minimize impact on air quality and public health. Open burning activities that are allowed include maintenance burning, recreational or ceremonial fires, and the burning of clean petroleum products for fire extinguisher training. Emergency burning is allowed in specified situations with oral approval from IDEM. In addition to the specific limited instances when open burning is allowed, a person may submit an application to IDEM for an approval to engage in open burning. The types of open burning that may be considered by IDEM for an approval include burning for purposes of fire training and burning of natural growth derived from a clearing operation.

In the First Notice of Comment Period, IDEM proposed to add five additional categories of open burning that may be suitable for exemption from the current IDEM approval process to relieve IDEM and the regulated community of unnecessary paperwork while continuing to protect Hoosiers and the environment. With this Continuation of First Notice of Comment Period, IDEM has identified one additional category of exemption for consideration in this rulemaking.

According to Title 4 of the United States Code (U.S.C.), a United States flag, "when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning" (4 U.S.C. 1(8)(k)). IDEM has received several requests from the American Legion and Veterans of Foreign Wars (VFW) to be allowed to properly dispose of large quantities of United States flags that those organizations have determined are no longer fit to be displayed, by ceremonially burning them. However, the current open burning rule at [326 IAC 4-1-3\(c\)](#) only allows the burning of clean wood products, paper, charcoal, or clean petroleum products for recreational or ceremonial fires, as long as certain conditions are met, and United States flags do not fit under this exemption.

In this rulemaking, IDEM is proposing to amend [326 IAC 4-1-3\(c\)](#) to allow the ceremonial burning of United States flags. IDEM intends for this exemption to allow for the respectful retirement of United States flags while minimizing emissions of pollutants during the burning process. Upon completion of the rulemaking, this rule will be submitted to the U.S. Environmental Protection Agency for approval as a revision to the state implementation plan.

Alternatives to Be Considered Within the Rulemaking

The First Notice of Comment Period, published on June 3, 2009 (DIN: [20090603-IR-326090362FNA](#)), included six alternatives for which comments were received. This Continuation of First Notice of Comment Period adds one additional alternative to be considered.

Alternative 7. Amend [326 IAC 4-1-3\(c\)](#) to include an exemption for the ceremonial burning of United States flags.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.

- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

There is no applicable federal law.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 7. This alternative would add an exemption for the ceremonial burning of United States flags. This alternative will still maintain the same criteria and conditions currently contained in open burning approvals. Therefore, the fiscal impact is expected to be minimal.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

<http://www.in.gov/idem/4108.htm>

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Alison Surface

IDEM Compliance and Technical Assistance Program - OPPTA

MC 60-04 IGCS W041

100 North Senate Avenue

Indianapolis, IN 46204-2251

(317) 232-8172 or (800) 988-7901

ctap@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Brad Baughn

IDEM Small Business Assistance Program Ombudsman

MC 50-01 IGCN 1307

100 North Senate Avenue

Indianapolis, IN 46204-2251

(317) 234-3386

bbaughn@idem.in.gov

Public Participation and Workgroup Information

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Manda Clevenger, Rule and State Implementation Plan Development Section, Office of Air Quality at (317) 232-8229 or (800) 451-6027 (in Indiana).

STATUTORY AND REGULATORY REQUIREMENTS

[IC 13-14-8-4](#) requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#09-362 (APCB) Open Burning Regulations

Manda Clevenger Mail Code 61-50

Rule and State Implementation Plan Development Section

Office of Air Quality

Indiana Department of Environmental Management

100 North Senate Avenue

Indianapolis, Indiana 46204

Hand delivered comments will be accepted by the IDEM receptionist on duty at the tenth floor reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-5967, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rule and State Implementation Plan Development Section at (317) 234-6530.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by July 30, 2010.

Additional information regarding this action may be obtained from Manda Clevenger, Rule and State Implementation Plan Development Section, Office of Air Quality, (317) 232-8229 or (800) 451-6027 (in Indiana).

Scott Deloney, Chief
Air Programs Branch
Office of Air Quality

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